

Probate Conservatorship Task Force

March 17, 2006 Hearing in Los Angeles

March 24, 2006 Hearing in San Francisco

Written Testimony by the Professional Fiduciary Association of California

Improving the Practices and Procedures of Probate Conservatorship Cases

Part 1: A Fresh Look at Temporary Conservatorships

“Whether the standards for establishment are appropriate”

The existing probate code and court rules determine that a temporary Conservatorship be granted in cases where “exigent” circumstances exist. PFAC suggests that a comprehensive set of rules and guidelines would give Judges and Court staff the appropriate framework for being able to grant or deny and temporary appointment.

It is almost impossible for a professional conservator to make the allegations necessary to prove the need for a temporary conservatorship without having had a pre-existing relationship with the proposed conservatee. Therefore, we believe the court should require a professional conservator, who is petitioning for appointment as a temporary conservator, to set forth the nature of the relationship with the proposed conservatee. It should also be required of a professional conservator, to state how the knowledge regarding the allegations made was acquired. It is more appropriate that a family member, or other interested party, to be the petitioner and state, under penalty of perjury, the need for the conservatorship, as required by the Judicial Council form petition.

“Whether notice is provided to the correct individuals”

This seems to be a legal issue regarding who is entitled to notice. PFAC supports the concept that the more persons who are noticed, the better.

The proposed conservatee may have nominated a person to be conservator in estate planning documents. There may be a trust with one or more successor trustee named. There may be a power of attorney or advance directive with agents named. All these people should receive notice.

“Whether the courts should be able to waive notice and, if so, under what circumstances”

The opinion of PFAC is that the Court should retain the right to waive notice. This can be essential where the health, safety or financial well being of the proposed Conservatee would be placed at risk by giving notice that will enable persons to take actions detrimental to the health, safety or financial wellbeing of the conservatee.

We are aware that waiver of notice is rather routine. It should be rare. Waiving notice should only be considered if an individual who otherwise would be entitled to notice is alleged to be an abuser and the abuse is the reason for the temporary conservatorship.

Examples of situations when it may be appropriate to waive notice could include: When the person is in immediate physical danger and should be moved to a safer location. The need to start evictions proceedings against occupants of a property. The need to serve restraining orders on those seeking to do harm. When immediate medical attention is required and an authorized person is needed to sign for a procedure. To prevent further losses in cases of financial abuse – put a hold on bank accounts or pay delinquent bills.

“What role could and should court investigators play in temporary Conservatorships”

The court investigators can and should continue to play a critical role in temporary Conservatorships. The understanding of PFAC is that the caseload for the offices of the court investigators is very heavy and it is uncertain that the requirement for a review of the proposed temporary Conservatee would be possible if mandated by the Code. We believe the proposal to have court investigators interview the proposed conservatee prior to the appointment would be a tremendous safeguard from the potential of abuse. We acknowledge that this proposal is tremendously expensive. Absent the will of the legislature to fund such a program,

“Are the powers and duties granted to temporary conservators appropriate”

The powers and duties granted to temporary conservators are appropriate. An important issue is raised by the extended time that many courts have to take to move to the permanent Conservatorship hearing. We believe that a temporary conservatorship should be time limited to 30 days. Such a provision already applies to exparte temporary guardianships. The Probate Code should be amended so that 2250(d) applies to temporary conservatorships also.

Temporary conservatorships restrict individual liberties of the temporary conservatee. Therefore, powers granted to a temporary conservator, especially those granted ex parte, should be limited and only as necessary for the protection of the conservatee or the conservatee's assets. A temporary conservator can return to court to request additional powers as needed.

“What might be better approaches to emergency intervention”

Often, Adult Protective Services is able to intercede on behalf of an elderly or disabled person to protect them and their assets. The person can only be protected if they voluntarily accept assistance from Adult Protective Services. Many times, the person is in denial of the need for assistance, therefore a conservatorship becomes necessary. The notification to APS would require additional funding also.

Mandatory family mediation should be required before the hearing for permanent appointment. The members of PFAC find that unresolved family issues make the duties of the professional conservator extremely difficult. The objective of this approach would be that either the family would respond and get involved in the care for their relative, or, it would identify the issues that would be best addressed by the professional conservator.

Part 2: How to Increase Court Oversight and Accountability in Permanent Conservatorships

“Whether there are sufficient due process safeguards to ensure the rights and interests of conservatees are being protected.”

We believe conservatees should be represented by counsel in all cases, unless the court make a specific finding that representation is not necessary. In other words, representation is the default position.

“Whether court review of conservatorships should be conducted more frequently, and what the focus of these reviews should be.”

Formal court review is an expensive process, both for the court and the conservatorship estate. There are sufficient provisions in state rules of court, local rules and the Probate Code to address all review by the court. The current proposals in the legislature regarding licensing of professional conservators may provide for additional reviews.

If funding were available, PFAC would support the concept of random periodic audits of professional conservators.

“The appropriate role for court investigators and other court personnel in preventing and deterring abuse.”

We are not aware of any restrictions on court staff or court investigators that prevents them from calling APS or the District Attorney to report suspected abuse. If there are such restrictions, they should be removed.

“Whether court personnel have the requisite education and training to properly perform their jobs.”

PFAC is willing to collaborate with Court Investigators Associations and other court personnel to provide appropriate education and training.

“How courts can more effectively review accountings.”

This, again, is a staffing and funding issue. More education and training of the review staff may help upgrade the quality of the review. Many counties have a local rule stating that the Court Investigator must be provided with a copy of the accounting. Standardization of this rule would expand the review.

“The appropriate role of the courts in providing assistance to self-represented litigants.”

PFAC is aware of local programs to assist individuals in pro-per. The best of them should be expanded and duplicated.